Kamaruzaman bin Yahaya v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor and other applications

HIGH COURT (KOTA BHARU) — CRIMINAL APPLICATIONS NOS 44–63 OF 1996, 44–69 OF 1996 AND 44–66 OF 1996
NIK HASHIM JC
4 NOVEMBER 1996

Criminal Procedure *— Habeas corpus — Detention of drug addict — Non-compliance with provisions of Drug Dependants (Treatment and Rehabilitation) Act 1983 — Whether certificate signed by medical officer without stating that he was a government medical officer was receivable under s 6(5) of the Act — Whether magistrates should explain the meaning of 'representations' and significance of making representations to applicants — Whether rehabilitation officer's report without his recommendation was complete and valid — Whether usage of word 'examine' as opposed to 'consider' vitiated the proceedings*

The applicants were ordered by way of orders for detention for treatment and rehabilitation ('the orders') to undergo treatment and rehabilitation for a period of two years and thereafter to undergo after-care supervision of a rehabilitation officer for another two years under s 6(1)(a) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 ('the Act').

The applicants made applications for writs of habeas corpus, alleging that three necessary condition precedents were not complied with before the orders were made. The first objection was with regard to the validity of the certificate as to drug dependency ('the certificate') in Form 2 of the Schedule to the Drug Dependants (Treatment and Rehabilitation) (Forms) Rules 1983 ('the Rules') which requires the certificate to be signed by a government medical officer or a registered medical practitioner. In the case of the applicants, Form 2 was signed by a medical officer and the word 'kerajaan' (government) was not inserted after the words 'pegawai perubatan' (medical officer). The issue was whether the certificate signed as such was a valid medical certificate receivable by a magistrate as proof of its contents under s 6(5) of the Act.

It was also argued that the second applicant did not seem to understand the significance of making representations and that magistrates were required to explain the meaning of making representations, failing which the order made would be invalid. The magistrates in this case had used pre-prepared notes where they had recorded under the headnotes 'Representasi Penama' the words 'Tiada Komplain' supposedly the answer given by the applicants. The issue was whether the applicants understood the true meaning of the word 'representasi' and whether it was incumbent on the presiding magistrates to explain the meaning of the word 'representations' and the significance and purpose of making representations.

The last objection was that although the report by the rehabilitation officer was read out to the applicants, the report was made without any recommendation. The issue for the court to decide

therefore was whether such a report would constitute a defective report thereby contravening s 6(3) of the Act. Finally, it was submitted that magistrates are required under s 6(3) of the Act to consider the rehabilitation officer's report and that the magistrates in this case had misdirected themselves in law when they used the term 'meneliti' (examine) instead of 'menimbang' (consider), resulting in the order they made being invalid. In this respect, the issue before the court was whether the use of the wrong term to decide the case was fatal.

Held, allowing the applications for habeas corpus:

(1) In this case, the same format in the form of Form 2 was used, but without the word 'kerajaan' after the designation 'Pegawai Perubatan' being mentioned in the Form. Unless the word 'kerajaan' is stated after the designation 'Pegawai Perubatan', the doctor could not be presumed to be a government medical officer under the Act. There was no evidence to say that the relevant hospital in this case was a government hospital and the court could not take judicial notice of a fact not contemplated under s 57 of the Evidence Act 1950. In the absence of the word 'kerajaan' in Form 2 or positive proof that the certificate was so signed by a government medical officer, the certificate so produced could not be said to be a valid medical certificate receivable by a magistrate of its contents under s 6(5) of the Act (see pp 263F–H and 264D).

(2) Making representations means the right to protest, which by necessary implication and reading it in the context of art 5(3) of the Federal Constitution, is a right to challenge whatever is being brought against him. Therefore, it is imperative that magistrates acquaint and appreciate the meaning of the word 'representations' and the significance and purpose of making representations before exercising their powers. Although the magistrates were under no duty to explain the meaning and significance of making representations to the applicants, in order to be fair to the applicants, especially so when they were not represented by counsel during the proceedings and furthermore, the inquiries before the magistrates were in the nature of a proceedings without a trial, it was incumbent on the presiding magistrates to explain the meaning of the word 'representations' and the significance and purpose of making representations to the applicants, so that with the explanations, they would know their rights and consequences of the proceedings. From the pre-prepared notes taken, it did not appear that the applicants understood the meaning of the word 'representasi' (see pp 264E, I and 265B–C); *Mahmod bin Jaudin v Penguasa Serenti Sungai Besi Selangor & Ors* [1996] 3 AMR 2920 followed.

(3) The object of the Act is to provide for the treatment and rehabilitation of drug dependants, and by its provisions, the rehabilitation officer's report is a very important piece of evidence for consideration by the magistrates. Although the magistrates are not bound by the rehabilitation officer's recommendation, nevertheless it plays an influential role in his decision whether or

not the applicants had to undergo treatment and rehabilitation. The recommendation becomes all the more important to the applicants as it can be the basis of their objections in the proceedings. As a result, the omission of the recommendation in the rehabilitation officer's report had rendered the report incomplete and defective as well as prejudiced the applicant's right to make representations fairly and properly (see pp 265I and 266A–B).

(4) Generally, the use of the wrong term to decide a case is not fatal, so long as there is evidence to support the order or judgment and that the magistrates have complied strictly with the mandatory provisions of the Act and the Rules. The word 'menimbang' includes 'meneliti' but not otherwise. They do not bear the same meaning. Since the law requires the court to 'consider' and not to 'examine', the use of the wrong term at the critical stage of the judgment coupled with the presence of too many flaws in the cases, was fatal to the validity of the detention orders (see p 266D–E).

[Bahasa Malaysia summary

Pemohon-pemohon telah diperintah dengan cara perintah tahanan untuk rawatan dan pemulihan ('perintah tersebut') untuk menjalani rawatan dan pemulihan untuk jangkamasa dua tahun dan selepas itu untuk menjalani pengawasan selepas rawatan di bawah seorang pegawai pemulihan untuk selama dua tahun lagi di bawah s 6(1)(a) Akta Penagih Dadah (Rawatan dan Pemulihan) 1983 ('Akta tersebut').

Pemohon-pemohon membuat permohonan untuk writ habeas corpus, mengatakan bahawa tiga syarat yang perlu tidak dipatuhi sebelum perintah tersebut dibuat. Bantahan yang pertama adalah berkaitan dengan kesahan sijil berkenaan dengan penagihan dadah ('sijil tersebut') dalam Borang 2 kepada Jadual di bawah Kaedah-Kaedah Penagih Dadah (Rawatan dan Pemulihan) (Borang) 1983 ('Kaedah-Kaedah tersebut') yang memerlukan sijil tersebut ditandatangani oleh seorang pegawai perubatan kerajaan atau seorang pengamal perubatan yang berdaftar. Di dalam kes pemohon-pemohon, Borang 2 telah ditandatangani oleh seorang pegawai perubatan dan perkataan 'kerajaan' tidak dimasukkan selepas perkataan 'pegawai perubatan'. Isu adalah sama ada sijil yang ditandatangani sedemikian adalah sijil perubatan sah yang boleh diterima oleh majistret sebagai bukti kandungannya di bawah s 6(5) Akta tersebut.

Adalah juga dihujahkan bahawa pemohon kedua tidak memahami kepentingan membuat representasi dan bahawa majistret perlu menerangkan makna membuat representasi dan sekiranya gagal maka perintah yang dibuat adalah tidak sah. Majistret-Majistret di dalam kes ini telah menggunakan nota-nota yang disediakan terlebih dahulu di mana mereka merekodkan di bawah nota kepala 'Representasi Penama' perkataan-perkataan 'Tiada Komplain' iaitu jawapan yang dikatakan telah diberi oleh pemohon-pemohon. Isu adalah sama ada pemohon-pemohon memahami maksud sebenar perkataan 'representasi' dan sama ada ianya adalah menjadi kewajipan majistret

yang menjadi pengerusi untuk menerangkan maksud perkataan 'representasi' dan kepentingan serta tujuan membuat representasi.

Bantahan terakhir adalah bahawa walaupun laporan daripada pegawai pemulihan telah dibacakan kepada pemohon-pemohon, laporan tersebut telah dibuat tanpa apa-apa syor. Isu untuk diputuskan oleh mahkamah adalah sama ada laporan sedemikian merupakan laporan yang tidak sempurna justeru melanggar s 6(3) Akta tersebut. Akhir sekali, telah dihujahkan bahawa majistret-majistret dikehendaki di bawah s 6(3) Akta tersebut untuk menimbang laporan pegawai pemulihan dan majistret-majistret dalam kes ini telah salah-arah dari segi undang-undang apabila mereka menggunakan terma 'meneliti' dan bukan 'menimbang', justeru perintah yang dibuat adalah tidak sah. Berhubung dengan ini, isu di hadapan mahkamah adalah sama ada penggunaan terma yang salah untuk memutuskan kes adalah padah.

Diputuskan, membenarkan permohonan untuk habeas corpus:

(1) Dalam kes ini, format yang sama dalam bentuk Borang 2 telah digunakan, tetapi tanpa perkataan 'kerajaan' selepas gelaran 'Pegawai Perubatan' disebutkan dalam Borang itu. Melainkan perkataan 'kerajaan' dicatatkan selepas gelaran 'Pegawai Perubatan', doktor yang berkenaan tidak boleh dianggap seorang pegawai perubatan kerajaan di bawah Akta tersebut. Tiada keterangan untuk menunjukkan bahawa hospital yang relevan dalam kes ini adalah sebuah hospital kerajaan dan mahkamah tidak boleh mengambil pengiktirafan kehakiman fakta yang tidak dijangka di bawah s 57 Akta Keterangan 1950. Tanpa perkataan 'kerajaan' di dalam Borang 2 atau bukti positif yang sijil tersebut telah ditandatangani oleh pegawai perubatan kerajaan, sijil tersebut tidak boleh dikatakan suatu sijil perubatan yang sah yang boleh diterima oleh mahkamah sebagai bukti kandungannya di bawah s 6(5) Akta tersebut (lihat ms 263F–H dan 264D).

(2) Membuat representasi bermakna hak untuk membantah, yang mana melalui implikasi perlu dan membacanya dalam konteks fasal 5(3) Perlembagaan Persekutuan, adalah hak untuk mencabar apa-apa yang dibawa terhadapnya. Maka adalah mustahak untuk pihak majistret mengenali dan memahami maksud perkataan 'representasi' dan kepentingan serta tujuan membuat representasi sebelum menjalankan kuasa-kuasa mereka. Walaupun majistret-majistret tiada apa-apa kewajipan untuk menerangkan maksud dan kepentingan membuat representasi kepada pemohon-pemohon, demi untuk berlaku adil kepada pemohon-pemohon, khususnya apabila mereka tidak diwakili oleh peguam ketika prosiding tersebut dan tambahan pula, siasatan di hadapan majistret-majistret adalah dalam bentuk prosiding tanpa perbicaraan, adalah kewajipan majistret untuk menerangkan maksud perkataan 'representasi' dan kepentingan serta tujuan membuat representasi kepada pemohon-pemohon supaya dengan penerangan sedemikian, mereka akan tahu akan hak dan akibat

prosiding tersebut. Daripada nota-nota yang telah disediakan terlebih dahulu, adalah didapati bahawa pemohon-pemohon tidak faham maksud perkataan 'representasi' (lihat ms 264E, I dan 265B–C); *Mahmod bin Jaudin v Penguasa Serenti Sungai Besi Selangor & Ors* [1996] 3 AMR 2920 diikut.

(3) Tujuan Akta tersebut adalah untuk memperuntukkan rawatan dan pemulihan penagih dadah, dan menurut peruntukannya, laporan pegawai pemulihan adalah suatu keterangan yang mustahak untuk dipertimbangkan oleh majistret. Walaupun majistret tidak terikat oleh syor yang dibuat oleh pegawai pemulihan, namun ianya memainkan suatu peranan yang berpengaruh ke atas keputusannya sama ada pemohon-pemohon perlu menjalani rawatan dan pemulihan atau tidak. Syor yang dibuat menjadi lebih mustahak lagi kepada pemohon-pemohon kerana ianya boleh dijadikan asas bantahan mereka di dalam prosiding. Akibatnya, tanpa apa-apa syor di dalam laporan pegawai pemulihan menjadikan laporan tersebut tidak lengkap dan cacat dan menjejaskan hak pemohon-pemohon untuk membuat representasi secara adil dan teratur (lihat ms 265I dan 266A–B).

(4) Umumnya, penggunaan terma yang salah untuk memutuskan sesuatu kes bukanlah padah, selagi terdapatnya keterangan untuk menyokong perintah atau penghakiman dan majistret telah mematuhi dengan ketat peruntukan mandatori Akta dan Kaedah tersebut. Perkataan 'menimbang' termasuk perkataan 'meneliti' tetapi tidak sebaliknya. Mereka tidak mempunyai makna yang sama. Oleh kerana undang-undang menghendaki mahkamah untuk 'menimbang' dan bukan 'meneliti', penggunaan terma yang salah di peringkat genting penghakiman bersama dengan kehadiran terlalu banyak kecacatan yang lain di dalam kes ini, ia adalah padah kepada kesahan perintah-perintah tahanan itu (lihat ms 266D–E).]

Notes

For cases on detention of drug addict, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1361–1363.

Cases referred to

Hj Sazali, Re [1992] 2 MLJ 864 (refd)
Hoo Thian Siong v PP [1988] 2 MLJ 401 (refd)
Mahmod bin Jaudin v Penguasa Serenti Sungai Besi Selangor & Ors [1996] 3 AMR 2920 (folld)
Roshidi bin Mohamed, Re [1988] 2 MLJ 193 (refd)
Sanuar Kamarudin bin Ahmad v Menteri Hal Ehwal Dalam Negeri Malaysia & Anor [1996] 5 MLJ 1 (refd)

Legislation referred to

Drugs Dependants (Treatment and Rehabilitation) Act 1983 ss 6(1)(a), (3), (4), (5)

Drug Dependants (Treatment and Rehabilitation) (Forms) Rules 1983 r 2, Form 2
Evidence Act 1950 s 57
Federal Constitution art 5(3)

Mohd Kamil bin Hj Samad (*Mohd Kamil & Co*) for the first applicant.
Che Azmi bin Che Omar (*Wan Haron, Shukri & Nordin*) for the second applicant.
Latifah bte Ariffin (*Latifah Ariffin & Co*) for the third applicant.
Ahmad Zakhi bin Mohd Daud (Federal Counsel) for the respondents.

Cur Adv Vult

Nik Hashim JC: There are three separate applications for writs of habeas corpus in this judgment. The applicants are:

(1) Kamaruzaman bin Yahaya (CA 44–63–1996) ('the first applicant')

(2) Syed Muhamad Asif bin Syed Ahmad (CA 44–69–1996) ('the second applicant')

(3) Mohamed Ali bin Mohamed (CA 44–66–1996) ('the third applicant')

They were ordered by two different magistrates to undergo treatment and rehabilitation for a period of two years and thereafter to undergo after-care supervision of a rehabilitation officer for another two years under s 6(1)(a) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 ('the Act'). Their applications were heard separately. However, I decided to give one judgment as the three learned counsel for the applicants had agreed to adopt each other's arguments to support their applications. The three cases involve the same issues and they are:

(1) Whether the certificate signed by the medical officer without stating in Form 2 that he was a government medical officer is receivable under s 6(5) of the Act;

(2) Whether the magistrates should explain the meaning of 'representations' and the significance of making representations to the applicants;

(3) Whether the report by rehabilitation officer without stating his recommendation therein is complete and valid; and

(4) Whether the usage of the word 'meneliti' as opposed to 'menimbang' by the magistrates in deciding the cases vitiates the proceedings.

I have listed in *Sanuar Kamarudin bin Ahmad v Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* [1996] 5 MLJ 1 at p 4, six condition precedents which are required to be complied with strictly before an order for detention for treatment and rehabilitation under the Act can be lawfully made on a drug dependant, and since they are of central importance for consideration of these cases, I must reproduce them:

(1) Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest (see art 5(3) of the Federal Constitution); A

(2) The person to be detained is certified by a government medical officer or a registered medical practitioner to be a drug dependant (see s 6(1) of the Act);

(3) The person to be detained must be given the opportunity of making representations and not merely appeals and pleas (see s 6(1) of the Act; *Hoo Thian Siong v PP* [1988] 2 MLJ 401); B

(4) The magistrate must consider a report by a rehabilitation officer —
(a) a copy of such report must be supplied to the person to be detained; and
(b) such report must be read out and explained to him (see s 6(3) of the Act; *Re Hj Sazali* [1992] 2 MLJ 864); C

(5) In making the order, the magistrate must have regard to the circumstances of the case, and the character, antecedents, age, health, education, employment, family and other circumstances of the person to be detained (see s 6(4) of the Act; *Re Hj Sazali* [1992] 2 MLJ 864); D and

(6) The magistrate must keep a record of the proceedings and the fact that the conditions precedent in sub-ss (1), (3), (4) and (5) of s 6 are complied with (see *Re Roshidi bin Mohamed* [1988] 2 MLJ 193).

I wish to repeat what I said in *Sanuar* at the same page (para D): E

> The importance of s 6 needs no emphasis. Its provision is penal in nature, affecting the freedom of an individual. It is therefore advised that a magistrate dealing with such a case appreciate the provision well before exercising his summary powers under the Act.

It would appear from the many cases brought before this court conditions No (2) and (3) stated above are often misunderstood and not followed and as a result many applications for habeas corpus were allowed. F

Before me, Puan Latifah bte Ariffin for the third applicant, has challenged the validity of the medical report in Form 2. She said there is no evidence on record to show that the doctor who signed the certificate was in fact a government medical officer. With respect, I agree with her submission. G

Form 2 is one of the 27 forms prescribed in the Schedule to the Drug Dependants (Treatment and Rehabilitation) (Forms) Rules 1983 ('the Rules'). Rule 2 provides: H

> The forms to be used for the purpose of the Act shall be those appearing in the Schedule.

By reason of the word 'shall' in the rule, I hold that the provision is mandatory and therefore, strict compliance with its provision is called for. I

The Schedule prescribes Form 2 in the following format:

FORM 2
DRUG DEPENDANTS (TREATMENT AND REHABILITATION) ACT 1983
[Section 6(1)]

CERTIFICATE AS TO DRUG DEPENDENCY

To:
The Magistrate/President)
Magistrate's/Sessions Court) .....

I, ..., a *government medical officer*/registered medical practitioner, having carried out the necessary test upon ..... NRIC No .....of ..... certify that he/she is/is not a drug dependant within the meaning of the Act. The dangerous drug/drugs through the use of which he/she became a drug dependant is/are .....

Dated the ..... 19.....

.....
(Medical Officer/Registered Medical Practitioner)

cc

Rehabilitation Officer, ... (Emphasis added.)

The need for the certificate to be signed by a government medical officer is clearly seen in s 6(1) which states:

> Where a person who has undergone the tests referred to in section 3 or 4, and, in consequence of such tests, is satisfied by a *government medical officer* or a registered medical practitioner to be a drug dependant, the officer shall produce him or cause him to appear, before a magistrate and if the magistrate, after giving such person an opportunity to make representations —
> (a) ...
> (b) ... (Emphasis added.)

In the cases under consideration, the same format in the form of Form 2 was used, but without the word 'kerajaan' (government) after the designation 'Pegawai Perubatan' being mentioned in the Form.

In my view, unless the word 'kerajaan' is stated after the designation 'Pegawai Perubatan', the doctor who signed the certificate in Form 2 cannot be presumed to be a government medical officer under the Act. Neither the court can presume he was a government medical officer simply because the doctor was from Hospital Pasir Puteh. There is no evidence to say that the hospital is a government hospital. The court cannot take judicial notice of a fact not contemplated under s 57 of the Evidence Act 1950. Thus, in the absence of the word 'kerajaan' in Form 2 or positive proof that the certificate was so signed by a government medical officer, the certificate so produced cannot be said to be valid medical certificate receivable by a magistrate as proof of its contents under s 6(5), which provides:

> A certificate under sub-s (1) purporting to be signed by a government medical officer or a registered medical practitioner shall be receivable by a magistrate without proof of the signature thereon, and the Magistrate shall accept it as proof of its contents, unless the contrary is proved.

Since there is no proof of its contents, the medical certificate is worthless, providing nothing to support that the applicant is a drug dependant, and indeed on this very ground alone, it is sufficient for the application to be allowed.

That, however, is not the end of the matter. There are three other grounds which, to my mind, merit serious consideration by the court.

Che Azmi bin Che Omar, for the second applicant, argued that based on the record, his client did not seem to understand the significance of making representations; whilst En Mohd Kamil bin Hj Samad for the first applicant submitted that since making representations means the right to protest or challenge as opposed to making appeals or pleas, it follows therefore that the magistrates are required to explain its meaning to the applicants. He contended that failure to do so would make the order under s 6(1) invalid. Mustapha Hussain J in *Hoo Thian Siong v PP* [1988] 2 MLJ 401 attempted to explain the meaning of making representations when he said this at p 402H:

> The Act specifically enacted the words 'giving such person an opportunity to make representations.' ... Making representations here means the right to protest, which by necessary implication and reading it in the context of art 5(3) of the Federal Constitution, is a right to challenge whatever is being brought against him.

It is therefore, in my view, imperative that the magistrates do acquaint and appreciate the meaning of the word 'representations' and the significance and purpose of making representations before exercising their powers under the Act. Mohamed Ariff J took pain to explain in *Re Roshidi* [1988] 2 MLJ 193 when he stated at p 196:

> ... Had she fully appreciated it and understood the significance and purpose of making representations as provided in s 6(1) of the Drugs Dependants (Treatment And Rehabilitation) Act 1983 she would, could and should have explained its purpose, in the same way one would have attached importance on the requirement to explain to an accused the charge against him, and the consequences of the three alternatives when the defence is called in any criminal trial or when an amended charge is to be read and explained with all its meaning and the consequences of the plea to an accused in the criminal trial. Assuming she has done so, it would have been reflected in the record of proceedings which she did not have. So one is left in doubt as to what actually transpired at the proceedings in the absence of the record. If she had done so, the would-be detainee would have properly understood the purpose and significance of making representations.

In the cases before me, the learned magistrates had used the same format of pre-prepared notes in the proceedings, and one of the headnotes was written with 'Representasi Penama' and followed by a short written answer 'Tiada Komplain' supposedly given by the applicants. At a glance, it would appear that the magistrates had complied with the law of providing the applicants the opportunity to make representations. But the question is whether the applicants truly understood the true meaning of the word 'representasi'. From the closer examination of the records, I hold that they did not understand the word. 'Representasi' is derived from the word 'representations'. In the context it is used in the Act, 'representations' has legal connotation in its meaning. It is true that there is no duty imposed on the magistrates under the Act to explain the meaning and significance of making representations to the applicants. Whilst with respect, I agree with Suriyadi J in *Mahmod bin Jaudin v Penguasa Serenti Sungai Besi Selangor &*

Ors [1996] 3 AMR 2920 at p 2926 that 'there is absolutely nothing in the relevant Act which required the magistrate either to explain the procedures to the respondents or to educate the latter on a court's discretionary power', nevertheless, in my view, in order to be fair to the applicants, especially so they were not represented by counsel during the proceedings and furthermore, the inquiries before the magistrates are in the nature of a proceeding without trial, it is incumbent on the presiding magistrates to explain the meaning of the word 'representations' (representasi) and the significance and purpose of making representations to the applicants, so that with the explanations, they would know their rights and consequences of the proceedings. It is the duty of the magistrates to see that the proceedings before them are conducted fairly and properly. In order to avoid confusion, I suggest that instead of using 'Representasi Penama' in these cases, a much simpler and plain headnote, for example: 'Penama diberi peluang membuat bantahan dan diterangkan maksudnya' be used in the proceedings. Whatever 'bantahan' or answer given by the applicants following the above inquiry must be recorded in full in the notes of the proceedings. If the above proposals are followed, then I think, the applicants cannot be heard to say that they are not given the opportunity to make representations and that they do not understand the significance of making representations.

Another point of not less importance which the magistrates must consider before making an order either under para (a) or (b) of s 6(1) is to consider a report by a rehabilitation officer ('the RO'). The first applicant at para 11 of his affidavit complained that the RO's report was incomplete in that the RO omitted to make his recommendation in the report. Accordingly, he argued, the report that was supplied to him was defective, thereby contravening s 6(3).

Here is what was stated at p 3 para 8 of the RO's report:

> 8 Syor pegawai pemulihan:
>
> Syor akan dikemukakan pada tarikh yang akan ditetapkan oleh mahkamah.

Section 6(3) requires:

> The Magistrate shall, before making an order either under para (a) or (b) of subsection (1), consider a report by a Rehabilitation Officer on such person, a copy of which shall be supplied to such person, and which shall be read out and explained to him.

As the records show, it is not disputed that the applicant was served with the RO's report minus the recommendation, and it was read over to him as such. In my opinion, the report without the recommendation is not a complete report which the applicant is entitled to be supplied and to be read out and explained to him under the law. The object of the Act is to provide for the treatment and rehabilitation of drug dependants, and by its provisions, the RO's report is a very important piece of evidence for consideration by the magistrates. The end of justice would be served if the magistrates and the applicants are equally served with the RO's report complete with his recommendation. Though the magistrates are not bound

by the RO's recommendation, nevertheless it plays an influential role in his decision whether the applicants had to undergo treatment and rehabilitation or not. The recommendation becomes all the more important material to the applicants as it can be the basis of their objections in the proceedings. In the result, the omission of the recommendation in the RO's report had not only rendered the report incomplete and defective but had also prejudiced the applicants' right to make representations fairly and properly.

Finally, En Mohd Kamil bin Hj Samad complained that the learned magistrates at the end of the proceedings had used the term 'meneliti' (examine) instead of 'menimbang' (consider) in deciding the case, and by so doing, he submitted that the magistrates had misdirected themselves in law resulting the order they made invalid.

Section 6(3) requires the magistrate, among other things, before making the order either under para (a) or (b) of s 6(1), to consider the RO's report.

Generally, in my view, the use of a wrong term to decide the case under the Act is not fatal, so long as there are evidence to support the order or judgment and that the magistrates have complied strictly with the mandatory provisions of the Act and the Rules.

'Menimbang' includes 'meneliti' but not otherwise. They do not bear the same meaning. Since the law requires the court to 'consider' and not to 'examine', the use of a wrong term at the critical stage of the judgment coupled with the presence of too many serious flaws in the cases, to my mind, is fatal to validity of the detention orders and the applicants' detention thereunder.

It is significant to note that at the very outset, En Ahmad Zakhi bin Mohd Daud, learned Federal Counsel for the respondents, obviously acting on the advice of his superior, did not, however, object to the applications and left to the wisdom of the court for decision.

In the event, I have no discretion but to grant the three applications. It follows that the three applicants be set at liberty forthwith and I so order.

Before departing, I would respectfully tender advice that if at all pre-prepared notes are to be used in the proceedings, which the court has no objection, there must be a uniform standard format applicable throughout the country, and if there is one, do ensure that the words and the forms used therein conform strictly to the requirements of the Act and the Rules. Perhaps, this judgment may be useful as providing yet another precedent on the subject of detention of drug addicts for treatment and rehabilitation cases in this country.

Applications allowed.

Reported by Pearl Wee